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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,944	08/19/2003	John R. Abe	ABE1P002	6785
28875	7590	06/02/2005	EXAMINER	
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			WOO, RICHARD SUKYOON	
			ART UNIT	PAPER NUMBER
			3639	

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/644,944

Applicant(s)

JOHN R. ABE

Examiner

Richard Woo

Art Unit

3639

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 1950.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-9,11-13 and 17-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-9,11-13 and 17-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 02-22-05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

- 1) Applicant's amendments filed March 1, 2005 has been entered.
- 2) Applicant's arguments with respect to claims 1 and 19-20 have been fully considered but they are not persuasive.

a) The applicant failed to overcome the rejections of Claims 1, 19 and 20 under 35 U.S.C. 112, 2nd paragraph although the applicant canceled claims 2, 5, 10, and 14-16 and incorporated into the Claims 1, 17 and 18.

See Infra 112 rejection of Claims 1, 3-4, 6-9, 11-13, 17-19, 21-23, and 32-40.

b) Even though the applicant heavily amended the independent claims to overcome the prior art rejection, all claims, as far as they are definite, are rejected as being anticipated by Delurgio et al..

Each amended claim is still incomplete for omitting essential element(s) or step(s). There is apparently a step missing after the step of reacting so as to further the applicant's invention. It is not clear why the step of reacting should be present between the steps of identifying and outputting. Further, it is not clear the meaning of "reacting." To what the invention is reacting, or with what should the invention be reacting?

c) With respect to the amended claim 20, the applicant fails to overcome the prior art by merely reciting the intended use of the invention because the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim

Art Unit: 3639

drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

3) The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

4) Claims 1, 3-4, 6-9, 11-13, 17-19, 21-23, and 32-40 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: any step to further limit and describe the step of reacting.

5) Claims 1, 3-4, 6-9, 11-13, 17-19, 21-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 1, line 13, the recitation of "reacting" renders the claim indefinite because it is not clear to what the invention is reacting, or with what should the invention be reacting.

In Claim 1, lines 4-9, it is not clear how receiving these data (prices, number of competitors, a business objective, etc.) further describe the step of generating an optimal price. They are directed to "non-functional descriptive material" and would not be considered for limitations because they cannot exhibit any functional interrelationship with the way in which computing processes are performed. See MPEP 2106 IV B1(b).

In Claim 1, lines 4-9, it is not clear how the price can be generated by simply "receiving". It is not clear what mathematical model or pricing scheme has been utilized to generate the optimized price.

Claim 19 contains the identical indefiniteness as cited above.

In Claim 24, line 1, it is not clear whether the claim 24 is depending from the system Claim 20 or the method Claim 1.

Claim Rejections - 35 USC § 102

6) Claims 1, 3-4, 6, 8-9, 11-13, 17-25, 27, 32, 39 and 40, as long as they are definite, are rejected under 35 U.S.C. 102(e) as being anticipated by Delurgio et al. (US 6,553,352).

As for Claim 1, Delurgio et al. discloses a method comprising:

generating an optimal price, wherein the optimal price is generated by receiving a plurality of prices associated with a price-frequency mathematical distribution, a member of competitors, a business objective, and a cost associated with a good or service (see col. 3, lines 37-64; col. 8, lines 41-45, lines 55-64; col. 9, lines 41-44);
identifying an expected result of utilizing the optimal price (see Fig. 26);
configuring and executing optimization parameters to determine the optimized prices for the product; and
outputting the optimal price (see Fig. 26).

Art Unit: 3639

As for Claim 3, Delurgio et al. further discloses the method, wherein the result includes units sold (see col. 3, line 37-col. 4, line 9).

As for Claim 4, Delurgio et al. further discloses the method, wherein the result includes a revenue (see col. 3, lines 37-45).

As for Claim 6, Delurgio et al. further discloses the method, wherein the result includes a gross profit (see Id.).

As for Claim 8, Delurgio et al. further discloses the method, wherein the result includes EBIT for each price (see Supra col. 3).

As for Claim 9, Delurgio et al. further discloses the method including computing a frequency distribution of a plurality of prices (see Fig. 26).

As for Claim 11, Delurgio et al. further discloses the method including calculating one result from a revenue, a gross profit for each price, wherein the result is stored in database.

As for Claim 12, Delurgio et al. further discloses the method including searching the table for the optimal price that optimizes a user-selected business objective (see Supra columns and descriptions for optimizing price and comparison thereof).

As for Claim 13, Delurgio et al. further discloses the method, wherein the business objective is selected from the group consisting of maximizing revenue for a good or service, maximizing gross profit (see Supra col. 3).

As for Claim 17, Delurgio et al. further discloses the method including if it is determined that the optimization is required, identifying a new price value, wherein the operations

Art Unit: 3639

are repeated based on the new price value (see col. 3, lines 37-64; col. 8, lines 41-45, lines 55-64; col. 9, lines 41-44).

As for Claim 18, Delurgio et al. further discloses the method, wherein the method is carried out utilizing a frequency distribution engine, a probability of win engine, an expected results engine, an optimization update engine, and a legacy system interface (see Figs. 1-38 and Supra columns).

As for Claim 21, Delurgio et al. further discloses the method, wherein a GUI is included (see Figs. 6-38 for example).

As for Claim 22, Delurgio et al. further discloses the method, wherein GUI is used for input.

As for Claim 23, Delurgio et al. further discloses the method, wherein GUI is used for any kind of input.

As for Claim 32, Delurgio et al. further discloses the method, wherein a probability of a customer purchase is determined for the optimal price (estimated product demand in Supra columns).

As for Claim 39, Delurgio et al. further discloses the method, wherein the result includes factory utilization (see col. 3, lines 37-64; col. 8, lines 41-45, lines 55-64; col. 9, lines 41-44).

As for Claim 40, Delurgio et al. further discloses the method, wherein the result includes market penetration (see Id.).

As for Claim 19, Delurgio et al. discloses a computer program product for optimizing an optimal price comprising:

computer code for generating an optimal price, wherein the optimal price is generated by receiving a plurality of prices associated with a price-frequency mathematical distribution, a member of competitors, a business objective, and a cost associated with a good or service (see col. 3, lines 37-64; col. 8, lines 41-45, lines 55-64; col. 9, lines 41-44);

computer code for identifying an expected result of utilizing the optimal price (see Fig. 26);

computer code for configuring and executing optimization parameters to determine the optimized prices for the product; and

computer code for outputting the optimal price (see Fig. 26).

As for Claim 20, Delurgio et al. discloses an optimal price simulator system comprising:

a processor (see Fig. 2 for the computer system) for generating an optimal price; and

an output device (see monitor in Fig. 2).

As for Claim 24, Delurgio et al. further discloses the system, wherein the interface is used to estimate the competitor prices (see col. 3, lines 37-64; col. 8, lines 41-45, lines 55-64; col. 9, lines 41-44; see Figs. 1-38).

Art Unit: 3639

As for Claim 25, Delurgio et al. further discloses the system, wherein the interface is estimated using the set of competitor prices (see Id.).

As for Claim 27, Delurgio et al. further discloses the system, wherein the price frequency distribution is converted to the table (see Fig. 18).

Claim Rejections - 35 USC § 103

8) Claims 7, 26, 28-31 and 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delurgio et al..

Delurgio et al. discloses the invention as recited above but does not expressly claim limitations in Claims 7, 26-31 and 33-38:

the result including an expected win-rate calculated based on the price frequency mathematical distribution and the number of competitors;

each price, probability of a customer purchase, and cost-per-unit being used to form an income/operational statement for each member of the prices;

income/operational statement being comprised of financial and operation terms including revenue, cost of goods, gross profit, EBIT, factory utilization and market penetration;

the actual probability of customer purchase;

difference between an actual and an expected probability;

updated price frequency distribution; and actual win-rate.

It would have been an obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Delurgio et al. such that the invention would consider the factors, such as the result including an expected win-rate calculated based on the price frequency mathematical distribution and the number of competitors; each price, probability of a customer purchase, and cost-per-unit being used to forma income/operational statement for each member of the prices; income/operational statement being comprised of financial and operation terms including revenue, cost of goods, gross profit, EBIT, factory utilization and market penetration; the actual probability of customer purchase; difference between an actual and an expected probability; updated price frequency distribution; and actual win-rate, for the purpose of providing a superior technique for configuring optimization scenarios, determining a set of optimum prices corresponding the scenarios, and displaying the set of optimum prices for multiple sets of highly related products within a product category because Delurgio et al. already factors in various data for optimization (see col. 11, lines 30-54).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


Art Unit: 3639

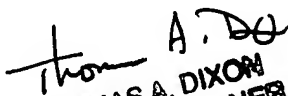
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Woo whose telephone number is 571-272-6813. The examiner can normally be reached on Monday-Friday from 8:30 AM -5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Richard Woo
Patent Examiner
Art Unit 3639
May 31, 2005


THOMAS A. DIXON
PRIMARY EXAMINER